

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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Applicant: Eric J. Hansen and Jesse J. Williams

For: EXTRACTION CLEANING WITH OXIDIZING AGENT

Serial No.: 09/589,973 Examiner: Necholus Ogden Jr.

Filed: 06/08/00 Group Art Unit: 1796

Atty. Docket: 71189-1300 Confirmation No: 9893

**REPLY TO DECISION ON PETITION**

U.S. Patent and Trademark Office  
ATTN: Director of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This paper is responsive to the Decision on Petition mailed September 2, 2008, as follows:

This is a petition under 37 CFR § 1.181 to invoke the supervisory authority of the Director of the U.S. Patent and Trademark Office to Reissue the Notice of Panel Decision from Pre-Appeal Brief Review and Reset the Reply Period. The Commissioner is hereby authorized to charge any required fees to Deposit Account No. 50-2003.

**FACTS**

On January 8, 2008, a Final Rejection was issued by the Examiner. On April 4, 2008, Applicants timely filed a Notice of Appeal and a Pre-Appeal Brief Request for Review, Applicant's Reasons in Support of Request for Pre-Appeal Brief Review of Final Rejection, Applicant's Response to Office Action Mailed January 8, 2008, and Electronic Patent Application Fee Transmittal.

As shown by the enclosed Declaration of Christine M. Judge, neither McGarry Bair nor Applicants' attorney received any communications from the U.S. Patent and Trademark Office by regular mail at the correspondence address of record set forth below and set forth on the decision denying the Pre-Appeal Brief Request for Review. However, Ms. Judge did download a copy of a Notice of Panel Decision from Pre-Appeal Brief Review ("Notice") on July 28, 2008, after discovering the decision on a review of the file in the Office Pair system. As attested in the accompanying Declaration of Christine M. Judge, the Notice was not received at the correspondence address of record. A search has been made of McGarry Bair records, including the electronic file jacket for this matter, and the application contents. The search indicates that the Notice was not received by McGarry Bair. A copy of the Master Docket where the Notice would have been entered is attached as Exhibit A to the enclosed Declaration of Christine M. Judge.

Christine M. Judge, an administrative assistant employed by the undersigned counsel of record, accessed the Image File Wrapper for this application through the PAIR system on July 28, 2008. According to the Image File Wrapper, a Notice of Panel Decision from Pre-Appeal Brief Review was said to be mailed on May 13, 2008. The Notice set a one-month deadline for Applicants to submit an appeal brief in accordance with 37 CFR § 41.37. Counsel for Applicants did not receive the Notice until it was downloaded on July 28, 2008. *See Attached Declaration of Christine M. Judge.*

Ms. Judge has accessed our electronic file for the above-identified patent application as well as the Master Incoming Correspondence folder. There is no record of receiving the Notice and I believe that this document, if sent, was never received by McGarry Bair until it was downloaded on July 28, 2008.

The Office has also requested to supply proof of our docketing of due dates. A master docket for this file is attached as Exhibit B to Ms. Judge's Declaration and shows the highlighted entry of "AWTG DEC ON REQUEST" with the base date of April 4, 2008, the date in which Applicants filed a Notice of Appeal and a Pre-Appeal Brief Request for Review, Applicant's Reasons in Support of Request for Pre-Appeal Brief Review of Final Rejection, Applicant's Response to Office Action Mailed January 8, 2008. The Decision (Notice) was never received from the Patent and Trademark Office. This date is open and the notes show that a copy of the Panel Decision was downloaded from PAIR on July 28, 2008. There is no current Master Docket

for the firm that would show those items that have been docketed for response to the Office during the time frame of May 13, 2008 and July 28, 2008, the time frame in which any Notice sent by the Office would have been docketed. However, a list of all incoming mail received by McGarry Bair PC from May 1, 2008 through July 28, 2008 is attached to Ms. Judge's Declaration as Exhibit B. The Notice does not appear on the list.

Applicants would also like to bring attention to the enclosed Notice of Panel Decision from Pre-Appeal Brief Review ("unrelated Notice") in Serial No. 10/608,780 (Attorney Docket No. 71189-1501), an unrelated patent application. This unrelated Notice was received from Group Art Unit 1796, the same Group Art Unit as the above-identified application on August 25, 2008. The attached unrelated Notice states that it was mailed from the U.S. Patent and Trademark Office on July 16, 2008. As shown on the face of this unrelated Notice, it was received and docketed on August 25, 2008 by the McGarry Bair docket clerk, six weeks after the alleged date of mailing from the Patent and Trademark Office. Applicants have serious doubts that the unrelated Notice was actually mailed on or about July 16, 2008.

### CONCLUSION

Applicants respectfully request that the Notice of Panel Decision from Pre-Appeal Brief Review be reissued and that the Reply Period be reset.

Respectfully submitted,  
Eric J. Hansen and Jesse J. Williams

Date: October 23, 2008 By: /John E McGarry/  
John E. McGarry, Reg. No. 22,360  
MCGARRY BAIR PC  
32 Market Avenue SW, Suite 500  
Grand Rapids, Michigan 49503  
616-742-3500



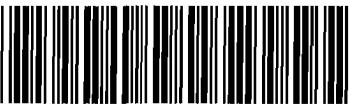
# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
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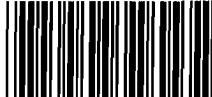
APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,780	08/15/2003	Jesse J. Williams	71189-1501	1779
20915	7590	07/16/2008	EXAMINER	
MCGARRY BAIR PC 32 Market Ave. SW SUITE 500 GRAND RAPIDS, MI 49503			DOUYN, LORNA M	
<b>RECEIVED:</b> <b>McGarry Bair</b> PC Intellectual Property Counselors <i>By bmv at 1:51 pm, 8/25/08</i>			ART UNIT	PAPER NUMBER
<b>DOCKETED:</b> <b>McGarry Bair</b> PC Intellectual Property Counselors <i>By bmv at 3:08 pm, 8/25/08</i>			1796	
			MAIL DATE	DELIVERY MODE
			07/16/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Application Number</b>	Application/Control No.	Applicant(s)/Patent under Reexamination
	10/604,780	WILLIAMS ET AL.
	VALARIE R. REID	Art Unit 1700
<b>Document Code - AP.PRE.DEF</b>		

## Notice of Panel Decision from Pre-Appeal Brief Review



This is in response to the Pre-Appeal Brief Request for Review filed \_\_\_\_\_.

1.  **Improper Request** – The Request is improper and a conference will not be held for the following reason(s):

- The Notice of Appeal has not been filed concurrent with the Pre-Appeal Brief Request.
- The request does not include reasons why a review is appropriate.
- A proposed amendment is included with the Pre-Appeal Brief request.
- Other: Rule 132 Declarations and Exhibits accompanied the Pre-Appeal Brief Request.

The time period for filing a response continues to run from the receipt date of the Notice of Appeal or from the mail date of the last Office communication, if no Notice of Appeal has been received.

2.  **Proceed to Board of Patent Appeals and Interferences** – A Pre-Appeal Brief conference has been held. The application remains under appeal because there is at least one actual issue for appeal. Applicant is required to submit an appeal brief in accordance with 37 CFR 41.37. The time period for filing an appeal brief will be reset to be one month from mailing this decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of this decision or the receipt date of the notice of appeal, as applicable.

- The panel has determined the status of the claim(s) is as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

3.  **Allowable application** – A conference has been held. The rejection is withdrawn and a Notice of Allowance will be mailed. Prosecution on the merits remains closed. No further action is required by applicant at this time.

4.  **Reopen Prosecution** – A conference has been held. The rejection is withdrawn and a new Office action will be mailed. No further action is required by applicant at this time.

All participants:

(1) VALARIE R. REID

(3) \_\_\_\_\_.

(2) \_\_\_\_\_.

(4) \_\_\_\_\_.

**PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant: Eric J. Hansen and Jesse J. Williams

For: EXTRACTION CLEANING WITH OXIDIZING AGENT

Serial No.: 09/589,973 Examiner: Necholus Ogden Jr.

Filed: 06/08/00 Group Art Unit: 1751

Atty. Docket: 71189-1300 Confirmation No: 9893

**DECLARATION OF CHRISTINE M. JUDGE**

Sir:

Christine M. Judge declares that:

1. I am an Administrative Assistant at McGarry Bair PC (McGarry Bair) and principally assist John E. McGarry, the attorney who is in charge of the above-identified application. I have been employed as an Administrative Assistant for McGarry Bair and its predecessors in interest continuously since 1998 and am familiar with the docketing system used by the firm. As part of my duties as an Administration Assistant, I meet with Mr. McGarry and typically on a weekly basis to review his docketed files and to schedule actions to make sure that all docketed matters are attended to on a timely basis. In addition to our regular meetings and as part of my duties as an Administrative Assistant, I review Mr. McGarry's docket on at least a weekly if not a daily basis and consult with Mr. McGarry to make sure that all docketed matters are timely completed and filed in the US or foreign patent offices.
  
2. McGarry Bair was in the original beta test group with the U.S. Patent and Trademark Office for electronically filing applications since 2002. Since that

time we have moved to become a paperless office. Every piece of physical mail that comes into McGarry Bair is scanned and saved to a master Incoming Correspondence folder, which is never deleted, and then is distributed to a responsible person.

3. McGarry Bair uses the following system to process all incoming patent-related mail from the US Patent & Trademark Office (“Office”):
  - a. Each piece of incoming mail is opened, scanned and saved to a master Incoming Correspondence folder by a responsible employee. The files named with the initials of the employee assistant responsible for processing that particular piece of mail followed by the McGarry Bair docket number and a summary of the type of mail. This folder and the correspondence contained therein is never deleted. Attached as *Exhibit A* is a listing of all documents in the Incoming Correspondence folder from May 1, 2008 through July 31, 2008. As evident from a review of Exhibit A, the Notice of Panel Decision from the Pre-Appeal Brief Review for this matter does not appear on this record.
  - b. Each item is docketed in our docketing system, PATTSY by the same responsible employee that handles the mail. The docketing is reviewed by a second responsible employee for accuracy.
  - c. An electronic notification of each docket entry is sent to the attorney(s) of record for the matter and at the same time to the appropriate administrative assistant(s) with a copy of the document.
  - d. The hard copy of each piece of incoming mail and a printout of the docket for the file are forwarded to the appropriate Administrative Assistant who confirms the docketing.
3. Each attorney and the appropriate Administrative Assistant at McGarry Bair automatically receives a notice by email each day as to those matters that are

due in the near future and on a the date of the email. In addition, each attorney and patent agent receives on a regular basis, usually weekly, a printed docket of the matters that are due for him or her over a period of the succeeding two month period.

4. A copy of the Docket for the above-identified patent application is attached as ***Exhibit B***. The Docket shows that a Notice of Appeal and a Request for a Pre-Appeal Brief Conference was filed on April 4, 2008. At that time, a docket entry was made for filing an appeal brief 60 days after April 4, 2008 and also for "AWTG DEC ON REQUEST" for 5/4/08, which means that the docket entry for "AWTG DEC ON REQUEST" will come up on the docket on May 4, 2008, and for each month thereafter until such time as the decision on the Request for a Pre-Appeal Brief Conference is received. In addition, the docket entry for filing an appeal brief each month after the 60 day period after filing a Notice of Appeal will also come up on the attorney's docket. As shown in the attached Master Docket, the PATTSY docketing system noted that a Request for a Pre-Appeal Brief Conference had been filed and that we were awaiting a decision from the USPTO on our Request. On or about July 14, 2008, I met with Mr. McGarry in one of our regular docket meetings and we discussed the above matter and noted that we had not yet received a decision on our Request. Mr. McGarry requested me to check the USPTO PAIR system to see if any decision of the review panel had been issued.
5. On July 28, 2008, I accessed the Image File Wrapper for the above-identified application through the PAIR system to check the status of the above-identified case. It showed that a Notice of Panel Decision from Pre-Appeal Brief Review was said to have been mailed on May 13, 2008. I downloaded a copy of this document, scanned it into our electronic filing system, updated the docket and gave it to Mr. McGarry.

6. I have accessed our electronic file for the above-identified patent application as well as the Master Incoming Correspondence folder. There is no record of receiving the Notice of Panel Decision from the Pre-Appeal Brief Review and I believe that this document was never received by McGarry Bair until I downloaded it on July 28, 2008.
7. There is no firm master docket that would show the docket entries for response due to the Office in the time frame between May 13, 2008 and July 28, 2008 at this time.
8. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States code and that such false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: October 23, 2008

/Christine M Judge/

Christine M. Judge

# EXHIBIT A

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To	Subject	Sent	Si... C...
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# **EXHIBIT B**

MB# 71189-1300

PRINTED ON: 10/23/2008

COUNTRY	US	UNITED STATES	TITLE						PRIOR	08/13/1997	
NEW/CON	CIP	SERIAL#	09/589,973	PROJECT 960 - EXTRACTION CLEANING WITH OXIDIZING AGENT						MAIL	06/08/2000
RELATED	71189-1167	PATENT#								FILE	06/08/2000
TYPE	UTL	STATUS	PENDING							PUBL	
CLIENT	71189	BISSELL INC. (HOMECARE)			1	CREF				ISSUE	
AGENT						AREF				1ST	08/13/1997
										EXP	08/13/2017

ID	O	ACTION	BASE	DUE IN	DUE	EXTNS	FINAL	EXT	RESPONSE	CALL UP	1	2	P
FI	N	APPLICATION DUE	02/03/2000	41D	03/15/2000		03/15/2000	0	03/14/2000	41D	Y	Y	Y
Report to client 01/18/08, awtg client instructions-cmj. Per instructions from TKA, please file an appeal-cmj.													
SC	N	AWTG RETURN APPLN	03/14/2000	7D	03/21/2000		03/21/2000	0	03/20/2000	0M	Y	Y	Y
SC	N	AWTG RET 2ND DRAFT	05/04/2000	14D	05/18/2000		05/18/2000	0	06/06/2000	14D	Y	Y	Y
CE	Y	CONVENTION ENDS	06/08/2000										
FF not possible. CIP application.													
AS	Y	ASSIGNMENT RECORDED	06/08/2000										
NC	Y	NOTIFY CLIENT OF FF	06/08/2000										
FF not possible. CIP patent application.													
F2	N	FILING CONFIRMATION	06/08/2000	1M	07/08/2000		07/08/2000	0	06/16/2000	1M	Y	Y	Y
FD	N	FILING DETAILS	06/08/2000	3M	09/08/2000		09/08/2000	0	08/31/2000	0M	Y	Y	Y
DS	N	INF DISCLOSURE STMT	06/08/2000	3M	09/08/2000		09/08/2000	0	06/08/2000	1M	Y	Y	Y
SC	Y	SUPPL IDS FILED	02/01/2002										
AO	N	AWTG 1ST OA	08/31/2000	18M	02/28/2002		02/28/2002	0	03/04/2002	1M	Y	Y	Y
Per PAIR on 9/6/2001, case has been assigned to Examiner Hamlin. Awaiting O/A from him -- mr													
SC	Y	AWTG NOA	05/24/2002										
Received second Office Action -- mr.													
RE	N	RESPONSE TO OA	02/27/2002	3M	05/27/2002	31	08/27/2002	1	05/24/2002	1M	Y	Y	Y
Office Action reported to client 03/12/02. Awtg client instructions-cmc. Per instructions from T. Ankney, please prepare and file response-cmc.													
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Office action reported to client 09/17/02. Awtg client instructions-cmj. Follow-up w/ T. Ankney 10/24/02, awaiting inventor review-cmj.													
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FR	N	FINAL REJECTION	01/29/2003	3M	04/29/2003	31	07/29/2003	3	06/27/2003	1M	Y	Y	Y
Office Action reported to client 02/18/03, awtg client instructions-cmj. Email reminder to client 03/04/03, awaiting client instuctions-cmj.													
Response to Office Action forwarded to PTO 04/29/03-cmj													
AO	N	AWTG OA OR NOA	11/13/2002	6M	05/13/2003		05/13/2003	0	02/03/2003	1M	Y	Y	Y
RT	Y	RCV ADVISORY ACTION	06/02/2003										
Per Advisory Action dated 05/29/03, claims are not allowable - khh													
NA	y	NOTICE OF APPEAL	06/27/2003										
AB	N	APPEAL BRIEF	06/27/2003	60d	08/26/2003	51	01/26/2004	0	08/21/2003	1M	Y	Y	Y
JEM preparing appeal brief.													
RQ	N	REQ RECONSIDERATION	07/01/2003	2M	09/01/2003		09/01/2003	0	08/21/2003	1M	Y	Y	Y
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Acknowledgement of Reply Brief rcvd 5/24/04. Application has been forwarded to BPAI for decision. Docketing Notice rcvd 4/11/05 - rjm														
AF	N	APPEAL TO C.A.F.C.	08/17/2005	2M	10/17/2005			10/17/2005	0	10/13/2005	1M	Y	Y	Y
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OA rcvd 1/12/06 - rjm														
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RT	Y	RCVD ADVISORY ACTION	09/01/2006											
FR	y	FINAL REJECTION	09/12/2006											
Reported to client 07/18/06, awtg client instructions-cmj. Response filed 08/10/06-cmj. Advisory Action rcvd 9/1/06 - rjm Notice of appeal filed 09/12/06-cmj.														
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Reported to client 07/18/06, awtg client instructions-cmj. Response filed 08/10/06-cmj. Advisory Action rcvd 9/1/06 - rjm														
	y	Pre-App Brief filed	09/12/2006											
AB	Y	APPEAL BRIEF	11/11/2006											
Request for Pre-Appeal Brief Review filed 09/12/06-cmj. Per decision dated 10/23/06, rejection withdrawn. New OA will be mailed - rjm														
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RR	N	RESTRICTION REQUIRE	04/16/2007	1M	05/16/2007	51		10/16/2007	0	05/14/2007	1M	Y	Y	Y
SC	N	AWTG NOA	05/14/2007	3M	08/14/2007			08/14/2007	0	07/30/2007	1M	Y	Y	Y
RE	N	RESPONSE TO OA	07/26/2007	3M	10/26/2007	31		01/26/2008	0	10/24/2007	1M	Y	Y	Y
Office Action reported to client 08/02/07, awtg client instructions-cmj. Per email from T Ankney, please prepare and file response-cmj.														
SC	y	IDS W/ FOREIGN REFS	01/10/2008											
Per JEM, no IDS w/ foreign refs necessary-cmj.														
SC	N	AWTG NOA	10/24/2007	3M	01/24/2008			01/24/2008	0	01/10/2008	1M	Y	Y	Y
ER	y	EARLY RESP FINAL REJ	03/08/2008											
Report to client 01/18/08, awtg client instructions-cmj. Per instructions from TKA, please file an appeal-cmj.														
	y	Pre-App Brief filed	04/04/2008											
FR	N	FINAL REJECTION	01/08/2008	3M	04/08/2008	31		07/08/2008	1	04/04/2008	1M	Y	Y	Y
Report to client 01/18/08, awtg client instructions-cmj. Advisory Action rcvd 4-23-08. bmv														
NA	N	NOTICE OF APPEAL	01/08/2008	3M	04/08/2008	31		07/08/2008	1	04/04/2008	1M	Y	Y	Y

Report to client 01/18/08, awtg client instructions-cmj. Per instructions from TKA, please file an appeal-cmj. Advisory Action rcvd 4-23-08. bmv														
RT	Y	RCVD ADVISORY ACTION	04/23/2008											
SC	N	AWTG DEC ON REQUEST	04/04/2008	1M	05/04/2008		05/04/2008	0			1M	Y	Y	Y
Awtg decision on request for pre-appeal review. Advisory Action rcvd 4/23/08 - rjm Notice of Pre-Appeal Panel Decision downloaded from PAIR 07/28/08, hardcopy never received from the Patent Office-cmj.														
AB	N	APPEAL BRIEF	05/13/2008	1M	06/13/2008	51	11/13/2008	3	08/13/2008		1M	Y	Y	Y
Pre-Appeal Brief Request filed 04/04/08, awtg decision on Pre-Appeal-cmj. Advisory Action rcvd 4/23/08 - rjm														
RT	Y	NON-COMPLIANT AB	08/25/2008											
R1	N	CORR BRIEF DUE	08/21/2008	1M	09/21/2008	51	02/21/2009	0	09/22/2008		0M	Y	Y	Y
SC	N	AWTG DEC ON PET	08/04/2008	2M	10/04/2008		10/04/2008	0	09/04/2008		1M	Y	Y	Y
Petition to Reset Appeal Brief Deadline filed 08/04/08, awtg decision-cmj. Decision rcvd dismissing petition - rjm														
R2	N	RESPONSE TO PET DEC	09/02/2008	2M	11/02/2008	41	03/02/2009	0			1M	Y	Y	Y
Deadline to file response to decision dismissing petition to reissue notice of panel decision - rjm														
SC	N	AWTG EXAMINER ANSWER	08/13/2008	4M	12/13/2008		12/13/2008	0			1M	Y	Y	Y
Notice of Non-Compliant Brief rcvd 8-25-08. bmv														

INVENTORS
Williams, Jesse J.
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ASSIGNEES
BISSELL HOMECARE, INC.

PRIOR APPLICATIONS							
REFERENCE#	CNTRY	SERIAL#	FILED	TITLE / DESCRIPTION		TYPE	
71189-1167	US	09/133,832	08/13/1998	UPRIGHT EXTRACTION CLEANING MACHINE		APPL	
FAMILY MEMBERS							
REFERENCE#	COUNTRY	NEW/CON	SERIAL#	FILED	PATENT #	ISSUED	STATUS
71189-0437	UNITED STATES	NEW	60/055,510	08/13/1997			EXPIRED
71189-1167	UNITED STATES	CIP	09/133,832	08/13/1998	6,131,237	10/17/2000	ISSUED
71189-1197	UNITED KINGDOM	CEQ	99037145	02/19/1999	2334668	03/27/2002	ISSUED
71189-1300	UNITED STATES	CIP	09/589,973	06/08/2000			PENDING
71189-1386	UNITED KINGDOM	DIV	02001329	02/19/1999	2367741	09/04/2002	ISSUED
71189-1571	UNITED STATES	CIP	10/710,776	08/02/2004			PUBLISHED
71189-1776	UNITED KINGDOM	CEQ	05158779	08/02/2005	2416678	05/21/2008	ISSUED
71189-2052	UNITED STATES	CON	11/931,523	10/31/2007			PUBLISHED
71189-2147	UNITED KINGDOM	DIV	08035842	08/02/2005			ABANDONE
71189-2148	UNITED KINGDOM	DIV	08035818	08/02/2005			PUBLISHED

USER-DEFINABLE FIELDS				PATENT FIELDS			
OldCnf		SMALL ENTITY	NO	PUBL #			
LOC		IND CLAIMS		ART UNIT	1796		
OldPub		TOTAL CLAIMS	28	CONFIRM#	9893		
				EXAMINER	Necholus Ogden, Jr.		

P05148US02 ENTERED 02/03/2000 MODIFIED 09/22/2008 2 BY cmj ATTORNEYS JEM / JAH / RJM